

**2012**  
**CUMULATIVE SUPPLEMENT**  
**TO**  
**MISSISSIPPI CODE**  
**1972 ANNOTATED**

**Issued September, 2012**

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI  
ENACTED THROUGH THE 2012 REGULAR SESSION  
OF THE LEGISLATURE**

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## **User's Guide**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



## **PUBLISHER'S FOREWORD**

### **Statutes**

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

### **Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

### **Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

### **Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

## **PUBLISHER'S FOREWORD**

### **Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

### **Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

### **Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

### **Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2012

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# **SCHEDULE OF NEW SECTIONS**

Added in this Supplement

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## **TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY**

### **CHAPTER 3. Sixteenth Section and Lieu Lands**

#### **IN GENERAL**

- SEC.  
29-3-92. Purchase of easements for access to sixteenth section or lieu lands; use of eminent domain to acquire easement access prohibited.

### **CHAPTER 5. Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion**

#### **IN GENERAL**

- 29-5-107. Mississippi Department of Transportation Building designated "William J. 'Billy' McCoy Building."  
29-5-109. Mississippi Emergency Management Agency Building designated "Haley R. Barbour Building."

## **TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS**

### **CHAPTER 5. Public Works Contracts**

#### **IN GENERAL**

- 31-5-37. Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions.

## **TITLE 33. MILITARY AFFAIRS**

### **CHAPTER 15. Emergency Management and Civil Defense**

#### **ARTICLE 5. DISASTER ASSISTANCE ACT OF 1993**

- 33-15-308. Requisition of additional funds for Disaster Assistance Trust Fund to provide for disaster assistance.





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# MISSISSIPPI CODE

## 1972

ANNOTATED

### VOLUME NINE

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#### TITLE 29

#### PUBLIC LANDS, BUILDINGS AND PROPERTY

Chapter 1.	Public Lands .....	29-1-1
Chapter 3.	Sixteenth Section and Lieu Lands .....	29-3-1
Chapter 5.	Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion .....	29-5-1
Chapter 9.	Inventories of State Property .....	29-9-1
Chapter 15.	Public Trust Tidelands .....	29-15-1

#### CHAPTER 1

#### Public Lands

In General .....	29-1-1
------------------	--------

#### IN GENERAL

SEC.	
29-1-35.	Sale of land after buildings destroyed; factors Secretary of State may consider in determining sales price for land.
29-1-57.	Sale of buildings, personal property and land associated with tax lands; factors Secretary of State may consider in determining sale price for land.

**§ 29-1-1. Purchase of land by state; title to land acquired with state funds as under name of state; sale of public lands; gift or donation of land to state; Secretary of State to sign conveyances; inventory of state lands; land purchased for benefit of state agency; use of assets of Public Employees' Retirement System restricted; cultural resources survey; land acquired for highways, through federal funds or for the Mississippi Major Economic Impact Authority projects exempt; recovery of expenses for record-keeping; requirements for certain legislatively authorized conveyances of specifically described real property.**

**Editor's Note** — Laws of 2011, ch. 381, § 1, provides:

“SECTION 1. (1) The Secretary of State is hereby authorized in his discretion to convey and transfer to the United States of America for the use and occupancy of the United States Coast Guard the following buildings and improvements constructed on Singing River Island and formerly owned and used by the United States of America for Naval Station Pascagoula: (a) Building 100 (Hazardous Waste Warehouse consisting of 2,162 square feet, more or less), (b) Building 102 (Hazardous Waste Office consisting of 82.5 square feet, more or less), and (c) Building 110 (Port Operation Facility consisting of 4,392 square feet, more or less), together with all concrete pads and fences associated with or used in connection with said buildings.

“(2) Such buildings and improvements may be donated or conveyed to the United States of America for the use and occupancy of the United States Coast Guard for any consideration and upon such other terms and conditions as the Secretary of State may deem advisable.

“(3) The Secretary of State is authorized to convey and transfer title to said buildings and improvements only. Any such conveyance shall provide that title to said buildings and improvements shall revert to the State of Mississippi in the event the United States Coast Guard fails to maintain a lease of the land on which said buildings are situated or in the event the United States Coast Guard terminates operations on Singing River Island.”

**§ 29-1-35. Sale of land after buildings destroyed; factors Secretary of State may consider in determining sales price for land.**

Where buildings and improvements situated on tax-forfeited lands have been removed or destroyed by fire, windstorm, or flood, the Secretary of State may, in his discretion, sell the tax-forfeited lands for any amount he may deem reasonable, irrespective of the amount of taxes for which the property was sold to the state. The Secretary of State, in determining the sales price for the land, may take into account the cost of cleanup and removal of debris from destroyed buildings and improvements situated thereon, or may contract with the purchaser for cleanup and removal of debris from destroyed buildings as part of the consideration for sale of the land.

**SOURCES:** Codes, 1942, § 4133; Laws, 1942, ch. 235; Laws, 2012, ch. 339, § 1, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment rewrote the section.

**§ 29-1-57. Sale of buildings, personal property and land associated with tax lands; factors Secretary of State may consider in determining sale price for land.**

Where tax-forfeited lands have situated thereon buildings or personal property which are deteriorating, the Secretary of State may sell and dispose of the buildings, personal property and land for any consideration he may deem reasonable, irrespective of the amount of taxes for which same was sold. Where the buildings or personal property have deteriorated to the condition they are unsafe or constitute a nuisance, the Secretary of State, in determining the sales price for the land, may take into account the cost of cleanup and

removal of the buildings and personal property situated thereon, or may contract with the purchaser for cleanup and removal of the buildings and personal property as part of the consideration for sale of the land.

**SOURCES:** Codes, 1942, § 4132; Laws, 1942, ch. 235; Laws, 1994, ch. 583, § 6; Laws, 2012, ch. 339, § 2, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment added the last sentence and made a minor stylistic change.

## LEASE OR RENTAL OF CERTAIN STATE-OWNED LANDS IN JACKSON

### § 29-1-205. Lease of certain land in Jackson to national educational honor fraternity.

**Editor's Note** — Section 37-4-5 provides that the terms “Junior College Commission” and “State Board for Community and Junior Colleges,” wherever they appear in the laws of Mississippi, shall mean the “Mississippi Community College Board.”

## CHAPTER 3

### Sixteenth Section and Lieu Lands

In General .....	29-3-1
------------------	--------

## IN GENERAL

SEC.	
29-3-39.	Reclassification of lands.
29-3-41.	Lease of forest lands restricted.
29-3-92.	Purchase of easements for access to sixteenth section or lieu lands; use of eminent domain to acquire easement access prohibited.

### § 29-3-39. Reclassification of lands.

It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify that land as it may deem advisable because of changes of conditions, and when any land is so reclassified, the board of education shall file a report thereof with the Secretary of State. From time to time the Secretary of State may institute proceedings to reclassify any sixteenth section lands which he may deem advisable and when any land is so reclassified, the Secretary of State shall file a report thereof with the board of education. When any land is reclassified under this section, notice thereof, rights to object thereto and rights to appeal therefrom shall be given in the same manner provided in Section 29-3-37 with reference to the original classification. However, all sixteenth section land shall be classified, or reclassified as is necessary, within one (1) year prior to the expiration date of any existing lease, and within sixty (60) days of the terminating of any lease of sixteenth section land by final court



order. In all litigation which may result from the classification or reclassification of lands by the Secretary of State under Sections 29-3-31 through 29-3-39, the Secretary of State shall be represented by the Attorney General, who shall have control of the litigation except as otherwise authorized in Section 7-5-39, but it shall be the duty of the various boards of education to furnish local legal assistance when requested so to do by the Attorney General.

**SOURCES:** Codes, 1942, § 6598-10; Laws, 1958, ch. 303, § 10; Laws, 1978, ch. 525, § 21; Laws, 2012, ch. 546, § 13, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment throughout the section, substituted “Secretary of State” for “state land commission” or similar language; made a minor stylistic change in the first sentence; substituted “However” for “Provided, however, that” in the fourth sentence; and inserted “except as otherwise authorized in Section 7-5-39” in the last sentence.

### § 29-3-41. Lease of forest lands restricted.

After any parcels of sixteenth section lands have been classified as hereinabove provided, all land which has been classified as forest land and which is not now under lease shall hereafter not be leased. The lands classified as forest lands which may be under a lease that has a fixed date of expiration shall not be re-leased when said lease expires; nor shall the lessee be permitted to cut or remove any timber therefrom except according to the terms of his lease. Such lands shall be reserved and kept as forest lands. Provided further, that the mineral rights in all such lands may be leased for oil, gas, or mineral purposes, and the board of education may grant leases to the surface of said lands classified as forest, which are limited to hunting and fishing rights and activities in relation thereto, and which shall not extend for a period longer than fifteen (15) years. It shall be the duty of the board of education to lease said hunting and fishing rights at public contract after having advertised same for rent in a newspaper published in said county or, if no newspaper be published in said county, then in a newspaper having a general circulation therein, for two (2) successive weeks, the first being at least ten (10) days prior to said public contract. Said hunting and fishing rights shall be leased to the person offering the highest annual rental. Bids received by the board of education in response to the advertisement shall be opened at a regular or special meeting of the board. The board of education, at its option, may reject all bids or accept the highest and best bid received in response to the advertisement, or the board of education may hold an auction among those who submitted bids in response to the advertisement, provided that three (3) or more persons who submitted bids in response to the advertisement participate in the auction. The opening bid at the auction shall be the highest bid received in response to the advertisement. Provided that if the board of education receives an acceptable bid or elects to hold an auction, the most recent holder of said hunting and fishing rights if it shall have made an offer, shall have the final right to extend its lease for the term advertised at the annual rental equal

to said highest offer received by the board of education, or equal to the highest bid offered at the auction, as the case may be.

If no bid acceptable to the board of education is received after said advertisement, the board of education may, within ninety (90) days, lease same by private contract for an amount greater than the highest bid previously rejected. If the board of education determines to lease the land by private contract, the most recent holder of said hunting and fishing rights, if it shall have made an offer, shall have the final right to extend its lease on the same terms and conditions as those contained in the private contract proposed to be accepted by the board of education.

**SOURCES:** Codes, 1942, § 6598-11; Laws, 1958, ch. 303, § 11; Laws, 1978, ch. 525, § 22; Laws, 1993, ch. 396, § 1; Laws, 2011, ch. 493, § 1, eff from and after July 1, 2011.

**Amendment Notes** — The 2011 amendment in the first paragraph, added the seventh through ninth sentences, inserted “or elects to hold an auction” and “or equal to the highest bid offered at the auction as the case may be” in the last sentence.

### **§ 29-3-92. Purchase of easements for access to sixteenth section or lieu lands; use of eminent domain to acquire easement access prohibited.**

(1) The school board of a school district may acquire, in the name of the district, by purchase, all easements that are necessary and desirable for access to sixteenth section lands or lieu lands. Whenever the purchase price for property on which an easement is to be located is greater than Fifty Thousand Dollars (\$50,000.00), the school board may not purchase the property for an amount exceeding the fair market value of the property, as determined by the average of at least two (2) independent appraisals by certified general appraisers licensed by the State of Mississippi.

(2) In no event shall eminent domain be used against any private land owner by any local school board or local governing authority to acquire easement access to sixteenth section lands or lieu lands. If a landowner objects or refuses to sell an easement right in his or her property to the local school board, the board shall seek another means to gain access to those lands that does not interfere with the landowner’s quiet use and enjoyment of his or her property.

**SOURCES:** Laws, 2011, ch. 372, § 1, eff from and after July 1, 2011.

**Editor’s Note** — Laws of 2011, ch. 372, § 2, provides:

“SECTION 2. Section 1 of this act shall be codified as a new section in Chapter 3, Title 29, Mississippi Code of 1972.”

CHAPTER 5

Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion

In General .....	29-5-1
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IN GENERAL

SEC.	
29-5-107.	Mississippi Department of Transportation Building designated “William J. ‘Billy’ McCoy Building.”
29-5-109.	Mississippi Emergency Management Agency Building designated “Haley R. Barbour Building.”

§ 29-5-77. Jurisdiction to enforce laws on state grounds.

**Editor’s Note** — Laws of 2009, ch. 561, § 6, as amended by Laws of 2011, ch. 507, § 4, effective April 26, 2011, provides:

“SECTION 6. The Department of Finance and Administration shall convey to the Mississippi Transportation Commission all of the right, title and interest in certain real property within the City of Jackson, Hinds County, Mississippi, described more specifically as follows:

“All of that certain block of the City of Jackson bounded by Hamilton Street on the north, Lamar Street on the west, Griffith Street on the south and North West Street on the east all being situated in and a part of Lots 1-7 of the Richard Griffith Subdivision, partially in the 9.40 acre lot Number 3 North and partially in the 10 acre lot Number 4 North of the City of Jackson, in the First Judicial District of Hinds County, Mississippi, all containing 4.30 acres more or less.”

§ 29-5-81. Description of state grounds.

**Editor’s Note** — Laws of 2009, ch. 561, § 6, as amended by Laws of 2011, ch. 507, § 4, effective April 26, 2011, provides:

“SECTION 6. The Department of Finance and Administration shall convey to the Mississippi Transportation Commission all of the right, title and interest in certain real property within the City of Jackson, Hinds County, Mississippi, described more specifically as follows:

“All of that certain block of the City of Jackson bounded by Hamilton Street on the north, Lamar Street on the west, Griffith Street on the south and North West Street on the east all being situated in and a part of Lots 1-7 of the Richard Griffith Subdivision, partially in the 9.40 acre lot Number 3 North and partially in the 10 acre lot Number 4 North of the City of Jackson, in the First Judicial District of Hinds County, Mississippi, all containing 4.30 acres more or less.”

§ 29-5-107. Mississippi Department of Transportation Building designated “William J. ‘Billy’ McCoy Building.”

The Mississippi Department of Transportation Building, located at 401 North West Street in Jackson, Hinds County, Mississippi, shall be renamed the “William J. ‘Billy’ McCoy Building.” The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a



prominent place within the building, that states the background, accomplishments and service to the state of the Honorable William J. “Billy” McCoy. The Department of Finance and Administration in conjunction with the Mississippi Department of Transportation shall erect or cause to be erected proper lettering or signage on the eastern outdoor facade of the building facing North West Street displaying the official name of the building as the “William J. ‘Billy’ McCoy Building.”

**SOURCES:** Laws, 2011, ch. 508, § 4, eff from and after July 1, 2011.

**Editor’s Note** — Laws of 2011, ch. 508, § 7, provides:

“SECTION 7. This act shall take effect and be in force from and after its passage, except for Sections 4, 5 and 6, which shall take effect and be in force from and after July 1, 2011.”

### **§ 29-5-109. Mississippi Emergency Management Agency Building designated “Haley R. Barbour Building.”**

The Mississippi Emergency Management Agency Building, located at 1 Mema Drive in Pearl, Rankin County, Mississippi, shall be named the “Haley R. Barbour Building.” The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the building, that states the background, accomplishments and service to the state of the Honorable Governor Haley R. Barbour. The Department of Finance and Administration in conjunction with the Mississippi Emergency Management Agency shall erect or cause to be erected proper lettering or signage on the outdoor facade of the building displaying the official name of the building as the “Haley R. Barbour Building.”

**SOURCES:** Laws, 2011, ch. 508, § 5, eff from and after July 1, 2011.

**Editor’s Note** — Laws of 2011, ch. 508, § 7, provides:

“SECTION 7. This act shall take effect and be in force from and after its passage, except for Sections 4, 5 and 6, which shall take effect and be in force from and after July 1, 2011.”

## **CHAPTER 9**

### **Inventories of State Property**

SEC.

29-9-13. Physical audit [Repealed effective July 1, 2015].

### **§ 29-9-13. Physical audit [Repealed effective July 1, 2015].**

(1) Representatives of the State Auditor’s office under the direction of the State Auditor, in making regular audits of the different state agencies, shall make a check or physical audit of the actual items or properties shown on their inventories and related records. Each state agency, the Secretary of the Senate, and the Clerk of the House of Representatives, when requested to do so, shall



furnish a competent person or persons to assist in this check or physical audit. The auditor shall keep his records current at all times and shall report to the agency concerned and the general status of the inventory involved, on the completion of each audit.

(2) The provisions of this section shall stand repealed on July 1, 2015.

**SOURCES:** Codes, 1942, § 3853-06; Laws, 1962, ch. 484, § 6; Laws, 1984, ch. 488, § 189; Laws, 2012, ch. 567, § 3, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment added the (1) designation, and therein, in the first sentence, substituted “State Auditor’s office” for “state department of audit” and “State Auditor” for “state auditor of public accounts”, and deleted “shall reconcile all invoices and records with the agencies’ property inventories, and” following “different state agencies”, in the last sentence, deleted “any such changes made” following “shall report to the agency concerned”, and deleted the last two sentences, which read: “This report shall also be included in the audit reports of the state department of audit covering the different state agencies. The state auditor shall use such reports from the state department of audit to correct and maintain current the inventories in his office”; and added (2).

## CHAPTER 15

### Public Trust Tidelands

SEC.  
29-15-5. Tidelands and submerged lands held in public trust; rights of littoral and riparian property owners.

#### § 29-15-5. Tidelands and submerged lands held in public trust; rights of littoral and riparian property owners.

(1) Tidelands and submerged lands are held by the state in trust for use of all the people, and are so held in their character as the beds and shores of the sea and its tidally affected arms and tributaries for the purposes defined by common law and statutory law. Littoral and riparian property owners have common law and statutory rights under the Coastal Wetlands Protection Law which extend into the waters and beyond the low tide line, and the state’s responsibilities as trustee extends to such owners as well as to the other members of the public.

(2) Residential property owners shall not be required to obtain a tidelands lease for exercising their common law and statutory littoral and riparian rights.

**SOURCES:** Laws, 1989, ch. 495, § 4; Laws, 2012, ch. 403, § 1, eff from and after passage (approved Apr. 18, 2012.)

**Amendment Notes** — The 2012 amendment added (2).

# TITLE 31

## PUBLIC BUSINESS, BONDS AND OBLIGATIONS

Chapter 1.	General Provisions Relative to Public Contracts .....	31-1-1
Chapter 3.	State Board of Public Contractors .....	31-3-1
Chapter 5.	Public Works Contracts .....	31-5-1
Chapter 7.	Public Purchases .....	31-7-1
Chapter 11.	State Construction Projects .....	31-11-1
Chapter 18.	Variable Rate Debt Instruments .....	31-18-1
Chapter 25.	Mississippi Development Bank Act .....	31-25-1
Chapter 29.	Institute for Technology Development .....	31-29-1

### CHAPTER 1

#### General Provisions Relative to Public Contracts

SEC.

31-1-15.           Number to be printed.

#### § 31-1-15.   Number to be printed.

The acts of the Legislature shall be printed in two (2) volumes, one (1) volume containing the public or general acts of the Legislature and the other volume the local and private acts of the Legislature, but for use of state departments the two (2) volumes can be combined. The number of general or public acts of the Legislature, of the local and private acts of the Legislature, of the journals of the Senate and the House of Representatives, of the Governor's message, and of the reports of officers, boards, and institutions to be printed, severally and respectively, shall be left within the discretion of the Secretary of State; and the Secretary of State may sell at a price, approximately the cost of publication, such copies of the laws and journals as may not be needed in the distribution, now or hereinafter required, and for the use of the Legislature and officers of the state.

The Secretary of State is authorized to dispose of all copies of the laws and journals after having kept same and failed to sell same as is provided by law at the expiration of a period of three (3) years from the date of publication. However, the Secretary of State shall keep a minimum of five (5) copies of each such publication on file in his office.

**SOURCES:** Codes, 1892, § 3302; 1906, § 3758; Hemingway's 1917, § 6451; 1930, § 5958; 1942, § 9002; Laws, 1924, ch. 350; Laws, 1935, ch. 33; Laws, 1952, ch. 334; Laws, 1968, ch. 506, § 13; Laws, 2012, ch. 390, § 3, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment substituted "five (5) copies" for "twenty-five (25) copies" in the last sentence of the second paragraph.

## CHAPTER 3

### State Board of Public Contractors

#### § 31-3-3. Composition of board; removal; filling of vacancies [Repealed effective July 1, 2015].

**SOURCES:** Codes, 1942, § 8968-02; Laws, 1958, ch. 473, § 2; Laws, 1960, ch. 393, § 2; Laws, 1978, ch. 524, § 1; Laws, 1980, ch. 498, § 2; Laws, 1985, ch. 505, § 8; reenacted, Laws, 1988, ch. 527, § 3; Laws, 1992, ch. 382, § 1; Laws, 1993, ch. 534, § 11; reenacted, Laws, 1995, ch. 431, § 11; reenacted without change, Laws, 2000, ch. 345, § 11; reenacted without change, Laws, 2005, ch. 375, § 11; reenacted without change, Laws, 2009, ch. 556, § 11, eff from and after July 1, 2009; reenacted without change, Laws, 2011, ch. 433, § 11, eff from and after July 1, 2011.

**Editor's Note** — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provides as follows:

“SECTION 14. This act shall take effect and be in force from and after its passage, and shall stand repealed on July 1, 2015.”

This section was reenacted without change by Laws of 2011, ch. 433, effective July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

**Amendment Notes** — The 2011 amendment reenacted the section without change.

#### § 31-3-5. Organization and administration [Repealed effective July 1, 2015].

**SOURCES:** Codes, 1942, § 8968-03; Laws, 1958, ch. 473, § 3; Laws, 1980, ch. 498, § 3; Laws, 1985, ch. 505, § 9; reenacted, Laws, 1988, ch. 527, § 4; Laws, 1992, ch. 382, § 2; Laws, 1993, ch. 534, § 12; reenacted without change, Laws, 2000, ch. 345, § 12; reenacted without change, Laws, 2005, ch. 375, § 12; reenacted and amended, Laws, 2009, ch. 556, § 12, eff from and after July 1, 2009; reenacted without change, Laws, 2011, ch. 433, § 12, eff from and after July 1, 2011.

**Editor's Note** — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provides as follows:

“SECTION 14. This act shall take effect and be in force from and after its passage, and shall stand repealed on July 1, 2015.”

This section was reenacted without change by Laws of 2011, ch. 433, effective July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

**Amendment Notes** — The 2011 amendment reenacted the section without change.



**§ 31-3-15. Certificates of responsibility required for bid.****JUDICIAL DECISIONS****1. In general.**

In a case in which a wastewater services company challenged a utility authority's award of a contract to another company for the operation and management of the authority's wastewater facility, the wastewater services company argued unsuccessfully that the contract was void because the company that was awarded the contract did not have a certificate of responsibility, as required by Miss. Code Ann. §§ 31-3-15 and 31-3-21(1). There

was no authority to support the conclusion that successful company was required to have a certificate of responsibility to operate and manage a wastewater facility and interceptor system; it was evident from the Request for Proposals and the proposals submitted that the operation and management of the facility was the major component of the project, not its maintenance. *Wastewater Plant Serv. Co. v. Harrison County Util. Auth.*, 28 So. 3d 686 (Miss. Ct. App. 2010).

**§ 31-3-21. Bidding and awards.****JUDICIAL DECISIONS****1. In general.**

In a case in which a wastewater services company challenged a utility authority's award of a contract to another company for the operation and management of the authority's wastewater facility, the wastewater services company argued unsuccessfully that the contract was void because the company that was awarded the contract did not have a certificate of responsibility, as required by Miss. Code Ann. §§ 31-3-15 and 31-3-21(1). There

was no authority to support the conclusion that successful company was required to have a certificate of responsibility to operate and manage a wastewater facility and interceptor system; it was evident from the Request for Proposals and the proposals submitted that the operation and management of the facility was the major component of the project, not its maintenance. *Wastewater Plant Serv. Co. v. Harrison County Util. Auth.*, 28 So. 3d 686 (Miss. Ct. App. 2010).

**CHAPTER 5****Public Works Contracts**

In General .....	31-5-1
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**IN GENERAL**

SEC.	
31-5-37.	Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions.

**§ 31-5-37. Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions.**

(1) All public works projects utilizing funds received by state or local governmental entities resulting from a federally declared disaster or a spill of national significance, including damages, penalties, fines or supplemental projects paid or financed by responsible parties pursuant to a court order, negotiated settlement, or other instrument, including under any law distributing such fines and penalties including the federal Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economy of the Gulf Coast Act of 2011 (R.E.S.T.O.R.E.), the Oil Pollution Act of 1990 or the Federal Water Pollution Control Act or similar legislation, shall be subject to the hiring policies established by this section.

(2) Contractors submitting bids for public works projects financed in whole or in part through the use of funds described in subsection (1) of this section shall submit with their bid an employment plan which shall include the following:

- (a) The types of jobs involved in the public works project;
- (b) The skill level of the jobs involved in the project;
- (c) Wage information on the jobs involved in the project;
- (d) The number of vacant positions that the contractor needs to fill;
- (e) How the contractor will recruit, low wage and unemployed individuals for job vacancies;
- (f) Such other information as may be required by the Mississippi Department of Employment Security; and
- (g) Proof of registration with the Mississippi Department of Employment Security for taxation in accordance with the provisions of Title 71.

(3) When a contractor's bid is accepted, the contractor shall enter into an agreement with the entity that accepted the bid that requires the contractor not to hire any personnel to fill vacant positions necessary for the public works project for a period of ten (10) days after the date of the agreement. During the ten-day period the Mississippi Department of Employment Security shall submit qualified individuals to the contractor to consider for the vacant positions. The contractor shall review the individuals submitted by the department before hiring individuals who are not submitted by the department.

**SOURCES:** Laws, 2012, ch. 505, § 1, eff from and after passage (approved May 1, 2012.)

## “HOLD HARMLESS” CLAUSES

**§ 31-5-41. “Hold harmless” clauses in construction contracts are void; exceptions.**

## JUDICIAL DECISIONS

1. In general.
- 1.5. Applicability.

**1. In general.**

Miss. Code Ann. § 31-5-41, by its own language, excepts performance bonds, and that exception applies even if the performance bond incorporates the construction contract by reference. *Fid. & Deposit Co. of Md. v. Ralph McKnight & Son Constr.*, 28 So. 3d 1282 (Miss. 2010).

§ 31-5-41 prohibited the issuer from seeking indemnity for its own negligence was error because the last sentence of the statute stated that its provisions did not apply to “construction bonds,” and a performance bond was a type of construction bond. *Fid. & Deposit Co. of Md. v. Ralph McKnight & Son Constr.*, 28 So. 3d 1282 (Miss. 2010).

**1.5. Applicability.**

Dismissal of performance bond issuer’s lawsuit on the basis that Miss. Code Ann.

## CHAPTER 7

## Public Purchases

In General .....	31-7-1
Implementation of Central Purchasing by Counties .....	31-7-103

## IN GENERAL

SEC.	
31-7-1.	Definitions.
31-7-9.	Purchasing regulations.
31-7-13.	Bid requirements and exceptions; public auctions.

**§ 31-7-1. Definitions.**

The following terms are defined for the purposes of this chapter to have the following meanings:

(a) “Agency” means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; and except the Mississippi State Port Authority.

(b) “Governing authority” means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities,



port authorities, Mississippi State Port Authority, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies created or operated under the authority of any county or municipality of this state. The term "governing authority" shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private individuals to the public for the use and benefit of the community and which are supported in part by private funds.

(c) "Purchasing agent" means any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for and make private contract for or purchase for any governing authority or agency.

(d) "Public funds" means and includes any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

(e) "Commodities" means and includes the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, but not commodities purchased for resale or raw materials converted into products for resale.

(i) "Equipment" shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.

(ii) "Furniture" shall be construed to include: desks, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture, appliances, carpets and all other items of personal property generally referred to as home, office or school furniture.

(f) "Emergency" means any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.



(g) “Construction” means the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

(h) “Purchase” means buying, renting, leasing or otherwise acquiring.

(i) “Certified purchasing office” means any purchasing office wherein fifty percent (50%) or more of the purchasing agents hold a certification from the Universal Public Purchasing Certification Council or other nationally recognized purchasing certification.

**SOURCES:** Codes, 1942, §§ 9024-01, 9024-10, 9024.5; Laws, 1958, ch. 480, §§ 1-4; Laws, 1962, ch. 497, §§ 1, 13; Laws, 1968, ch. 506, § 21; Laws, 1980, ch. 440, § 1; Laws, 1981, ch. 306, § 1; Laws, 1984, ch. 488, § 152; Laws, 1985, ch. 525, § 13; Laws, 1988, ch. 589, § 22; Laws, 1988 Ex Sess, ch. 14, § 63; Laws, 1990, ch. 585, § 1; Laws, 1993, ch. 556, § 1; Laws, 1996, ch. 404, § 2; Laws, 1999, ch. 335, § 1; Laws, 2000, ch. 593, § 2; Laws, 2003, ch. 539, § 3; Laws, 2004, ch. 390, § 1; Laws, 2012, ch. 485, § 2, eff from and after passage (approved Apr. 26, 2012.)

**Amendment Notes** — The 2012 amendment added “and except the Mississippi State Port Authority” at the end of (a); added “Mississippi State Port Authority” following “port authorities” in the first sentence of (b); and made minor stylistic changes throughout.

## § 31-7-9. Purchasing regulations.

(1)(a) The Office of Purchasing, Travel and Fleet Management shall adopt purchasing regulations governing the purchase by any agency of any commodity or commodities and establishing standards and specifications for a commodity or commodities and the maximum fair prices of a commodity or commodities, subject to the approval of the Public Procurement Review Board. It shall have the power to amend, add to or eliminate purchasing regulations. The adoption of, amendment, addition to or elimination of purchasing regulations shall be based upon a determination by the Office of Purchasing, Travel and Fleet Management with the approval of the Public Procurement Review Board, that such action is reasonable and practicable and advantageous to promote efficiency and economy in the purchase of commodities by the agencies of the state. Upon the adoption of any purchasing regulation, or an amendment, addition or elimination therein, copies of same shall be furnished to the State Auditor and to all agencies affected thereby. Thereafter, and except as otherwise may be provided in subsection (2) of this section, no agency of the state shall purchase any commodities covered by existing purchasing regulations unless such commodities be in conformity with the standards and specifications set forth in the purchasing regulations and unless the price thereof does not exceed the maximum fair price established by such purchasing regulations. The said Office of Purchasing, Travel and Fleet Management shall furnish to any county or municipality or other local public agency of the state requesting

same, copies of purchasing regulations adopted by the Office of Purchasing, Travel and Fleet Management and any amendments, changes or eliminations of same that may be made from time to time.

(b) The Office of Purchasing, Travel and Fleet Management may adopt purchasing regulations governing the use of credit cards, procurement cards and purchasing club membership cards to be used by state agencies, governing authorities of counties and municipalities, school districts and the Chickasawhay Natural Gas District. Use of the cards shall be in strict compliance with the regulations promulgated by the office. Any amounts due on the cards shall incur interest charges as set forth in Section 31-7-305 and shall not be considered debt.

(c) Pursuant to the provision of Section 37-61-33(3), the Office of Purchasing, Travel and Fleet Management of the Department of Finance and Administration is authorized to issue procurement cards to all public school district classroom teachers and other necessary direct support personnel at the beginning of the school year for the purchase of instructional supplies using Educational Enhancement Funds. The cards will be issued in equal amounts per teacher determined by the total number of qualifying personnel and the then current state appropriation for classroom instructional supplies under the Education Enhancement Fund. All purchases shall be in accordance with state law and teachers are responsible for verification of capital asset requirements when pooling monies to purchase equipment. The cards will expire on a pre-determined date at the end of each school year. All unexpended amounts will be carried forward, to be combined with the following year's instructional supply fund allocation, and reallocated for the following year. The Department of Finance and Administration is authorized to loan any start-up funds at the beginning of the school year to fund this procurement system for instructional supplies with loan repayment being made from sales tax receipts earmarked for the Education Enhancement Fund.

(2) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, purchasing regulations governing the purchase of unmarked vehicles to be used by the Bureau of Narcotics and Department of Public Safety in official investigations pursuant to Section 25-1-87. Such regulations shall ensure that purchases of such vehicles shall be at a fair price and shall take into consideration the peculiar needs of the Bureau of Narcotics and Department of Public Safety in undercover operations.

(3) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, regulations governing the certification process for certified purchasing offices. Such regulations shall require entities desiring to be classified as certified purchasing offices to submit applications and applicable documents on an annual basis, at which time the Office of Purchasing, Travel and Fleet Management may provide the governing entity with a certification valid for one (1) year from the date of issuance.

**SOURCES:** Codes, 1942, § 9024-06; Laws, 1962, ch. 497, § 6; Laws, 1984, ch. 488, § 155; Laws, 1985, ch. 525, § 16; Laws, 1988 Ex Sess, ch. 14, § 71; Laws, 1989, ch. 394, § 1; Laws, 2000, ch. 593, § 5; Laws, 2002, ch. 316, § 1; Laws, 2003, ch. 539, § 4; Laws, 2004, ch. 562, § 2; Laws, 2006, ch. 537, § 7; Laws, 2012, ch. 543, § 4, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment inserted “school districts” in the first sentence of (1)(b); and added (1)(c).

### § 31-7-13. Bid requirements and exceptions; public auctions.

All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) **Bidding procedure for purchases not over \$5,000.00.** — Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

(b) **Bidding procedure for purchases over \$5,000.00 but not over \$50,000.00.** — Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars (\$50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term “competitive written bid” shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor’s letterhead or identifiable bid form and signed by authorized personnel representing the



vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars (\$5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

**(c) Bidding procedure for purchases over \$50,000.00. —**

**(i) Publication requirement. —**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. The purchasing entity may designate the method by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, bids received via a reverse auction, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars (\$25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time

and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet Web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet Web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated Web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated Web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated Web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the Web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

(ii) **Bidding process amendment procedure.** — . If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** — In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.** —

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) Agencies and governing authorities may establish secure procedures by which bids may be submitted via electronic means.

(d) **Lowest and best bid decision procedure.** —



(i) **Decision procedure.** — Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** — In addition to the decision procedure set forth in paragraph (d) (i), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi Landmarks.** — In addition to the decision procedure set forth in paragraph (d) (i), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on



its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(iv) **Construction project negotiations authority.** — If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** — For the purposes of this section, the term “equipment” shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten

Thousand Dollars (\$10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** — When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) **Construction contract change authorization.** — In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** — In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** — Any agency or governing authority authorized to



enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** — If the governing board or the executive head, or his designee, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency, or his designee, shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable.

(k) **Governing authority emergency purchase procedure.** — If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon

from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

**(l) Hospital purchase, lease-purchase and lease authorization.**

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

**(m) Exceptions from bidding requirements.** — Excepted from bid requirements are:

(i) **Purchasing agreements approved by department.** — Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) **Outside equipment repairs.** — Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** — Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) **Raw gravel or dirt.** — Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** — Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this subparagraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) **Intergovernmental sales and transfers.** — Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this section. It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** — Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) **Single source items.** — Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

(ix) **Waste disposal facility construction contracts.** — Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom,



such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) **Hospital group purchase contracts.** — Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) **Information technology products.** Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community and junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.** Purchases of coal and/or natural gas by municipally owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.** From and after July 1, 1990, contracts by Mississippi Authority for Educational Television

with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) **Purchases of prison industry products.** From and after January 1, 1991, purchases made by state agencies or governing authorities involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xx) **Junior college books for rent.** Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxi) **Certain school district purchases.** Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxii) **Garbage, solid waste and sewage contracts.** Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxiii) **Municipal water tank maintenance contracts.** Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.

(xxiv) **Purchases of Mississippi Industries for the Blind products.** Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxv) **Purchases of state-adopted textbooks.** Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi Major Economic Impact Act.** Contracts entered into pursuant to the provisions of Section 57-75-9(2), (3) and (4).

(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by this sub-



paragraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) **Hospital lease of equipment or services.** Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

(xxx) **School yearbooks.** Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.

(xxxi) **Design-build method and dual-phase design-build method of contracting.** Contracts entered into under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

(xxxii) **Toll roads and bridge construction projects.** Contracts entered into under the provisions of Section 65-43-1 or 65-43-3.

(xxxiii) **Certain purchases under Section 57-1-221.** Contracts entered into pursuant to the provisions of Section 57-1-221.

(xxxiv) **Certain transfers made pursuant to the provisions of Section 57-105-1(7).** Transfers of public property or facilities under Section 57-105-1(7) and construction related to such public property or facilities.

(n) **Term contract authorization.** All contracts for the purchase of:

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost

index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) **Electrical utility petroleum-based equipment purchase procedure.** When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which

involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) **Minority set-aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term “minority business” means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

(i) “Asian” means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(ii) “Black” means persons having origins in any black racial group of Africa.



(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) **Construction punch list restriction.** The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) **Procurement of construction services by state institutions of higher learning.** Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for proposals are solicited.

(v) **Insurability of bidders for public construction or other public contracts.** In any solicitation for bids to perform public construction or other public contracts to which this section applies including, but not limited to, contracts for repair and maintenance, for which the contract will require insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.

**SOURCES:** Codes, 1942, § 9024-08; Laws, 1962, ch. 497, § 8; Laws, 1980, ch. 440, § 6; Laws, 1981, ch. 306, § 2; Laws, 1982, ch. 449, § 1; Laws, 1983, ch. 330, § 3, ch. 341; Laws, 1984, ch. 363; Laws, 1984, ch. 480, § 3; Laws, 1984, ch. 488, § 158; Laws, 1985, ch. 493, § 6; Laws, 1986, ch. 398; Laws, 1986, ch. 489, § 14; Laws, 1988, ch. 351; Laws, 1988, ch. 589, § 23; Laws, 1988 Ex Sess, ch. 14, § 65; Laws, 1989, ch. 349, § 1; Laws, 1989, ch. 394, § 3; Laws, 1990, ch. 534, § 27; Laws, 1990, ch. 545, § 2; Laws, 1990, ch. 561, § 2; Laws, 1990, 1st Ex Sess, ch. 51, § 2; Laws, 1991, ch. 337, § 1; Laws, 1991, ch. 523, § 1; Laws, 1992, ch. 571 § 3; Laws, 1993, ch. 418, § 2; Laws, 1993, ch. 617, § 12; Laws, 1993, ch. 556, § 3; Laws, 1994, ch. 471, § 2; Laws, 1994 Ex Sess, ch. 26, § 22; Laws, 1996, ch. 495, § 1; Laws, 1997, ch. 593, § 1; Laws, 1998, ch. 574, § 6; Laws, 1999, ch. 407, § 1; Laws, 1999, ch. 459, § 1; Laws, 2000, ch. 428, § 3; Laws, 2000, ch. 593, § 9; Laws, 2000, 3rd Ex Sess, ch. 1, § 13; Laws, 2001, ch. 333, § 2; Laws, 2002, ch. 563, § 1; Laws, 2003, ch. 539, § 5; Laws, 2004, ch. 394, § 1; Laws, 2004, ch. 577, § 2; Laws, 2004, 3rd Ex Sess, ch. 1, § 190; Laws, 2005, ch. 504, § 5; Laws, 2006, ch. 446, § 1; Laws, 2007, ch. 423, § 1; Laws, 2007, ch. 424, § 2; Laws, 2007, ch. 494, § 7; Laws, 2007, ch. 582, § 22; Laws,



2008, ch. 417, § 1; Laws, 2008, ch. 469, § 1; brought forward without change, Laws, 2008, ch. 544, § 4; Laws, 2009, ch. 538, § 1; Laws, 2010, ch. 301, § 7; Laws, 2010, ch. 533, § 26; Laws, 2011, ch. 485, § 2; Laws, 2012, ch. 446, § 2, eff from and after July 1, 2012.

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (d). Paragraph (iv), as added by Section 2 of Chapter 485, Laws of 2011, was redesignated paragraph (iii), and former (iii) was redesignated (iv). The Joint Committee ratified the correction at its July 13, 2011, meeting.

**Amendment Notes** — The 2011 amendment, in (c)(i)2, added the last sentence and deleted the former last sentence, which had contained a repealer for (c)(i)2; and added (d)(iii) and redesignated former (d)(iii) as (d)(iv).

The 2012 amendment added (m)(xxxiv).

## JUDICIAL DECISIONS

1. In general.
2. Factors considered.
6. Exemption from bidding process.

### 1. In general.

Circuit court properly ruled that a contractor's appeal of the decision of a county board of supervisors to award a contract to another was moot because the circuit court gave the board an opportunity to decide that it would reject all previous bids and reopen the request-for-proposals process, and the board decided to reject all bids and reopen the request-for-proposals process; any error that resulted from the circuit court's decision to remand for reconsideration of the matter by the board was harmless because the circuit court could have ordered the board to reject all bids and reopen the request-for-proposals process. *Precision Communs., Inc. v. Hinds County*, 74 So. 3d 366 (Miss. Ct. App. 2011), writ of certiorari denied by 73 So. 3d 1168, 2011 Miss. LEXIS 548 (Miss. 2011).

In a construction company's breach of contract action, a trial court erred in granting summary judgment to the Mississippi Transportation Commission because the last sentence of a diesel fuel and asphalt cost (FAC) provision in the parties' completion agreement should have been stricken because it contravened the requirements of Miss. Code Ann. § 31-7-13(i) (Rev. 2008). While the FAC provision was unambiguous, and the plain meaning of the words used in the FAC supported

the Commission's interpretation of the contract, the last sentence of the FAC impermissibly locked in reimbursements to the construction company based on the price of petroleum as of the expiration of contract time. *Hill Bros. Constr. Co. v. Miss. Transp. Comm'n*, 42 So. 3d 497 (Miss. 2010).

### 2. Factors considered.

County board of supervisors' consideration of a local company's promise to employ local residents and provide special services to the elderly in awarding a contract for solid waste disposal, when it had failed to include them in the request for proposals, was a violation of Miss. Code Ann. § 31-7-13(r), requiring the bid process to be reinitiated. *Preferred Transp. Co., LLC v. Claiborne County Bd. of Supervisors*, 32 So. 3d 549 (Miss. Ct. App. 2010).

In case in which a wastewater services company challenged a utility authority's acceptance of another company's proposal for the operation and management of the authority's wastewater facilities, the services company unsuccessfully argued that there was no justification in awarding the winning company the contract because the services company's proposal was the lowest price. Pursuant to Miss. Code Ann. § 31-7-13(r), price was just one factor for the authority to consider. *Wastewater Plant Serv. Co. v. Harrison County Util. Auth.*, 28 So. 3d 686 (Miss. Ct. App. 2010).

### 6. Exemption from bidding process.

In case in which a wastewater services company challenged a utility authority's

acceptance of another company's proposal for the operation and management of the authority's wastewater facilities, the services company unsuccessfully argued that the authority violated Miss. Code Ann. § 31-7-13(c) and (d) by not re-opening the bidding so that other bidders could modify their bids and by not stating the reasons

for not choosing the lowest bid. Neither subsection applied to the contract because the contract was for a wastewater-treatment system and was exempt from bidding requirements pursuant to Miss. Code Ann. § 31-7-13(m)(xxii). *Wastewater Plant Serv. Co. v. Harrison County Util. Auth.*, 28 So. 3d 686 (Miss. Ct. App. 2010).

### ATTORNEY GENERAL OPINIONS

A county or county park commission may contract construction and management of a county park to a third party, including a nonprofit corporation, but

must first advertise and let the project for public bids under Miss. Code Ann. § 31-7-13. *Allen*, March 30, 2007, A.G. Op. #07-00106, 2007 Miss. AG LEXIS 95.

## § 31-7-14. Public contracts of energy efficiency services.

### ATTORNEY GENERAL OPINIONS

A government entity may amend its energy efficiency contract in a manner consistent with Miss. Code Ann. § 31-7-14 where the proposed amendment is within the scope of the original proposal, was contemplated in the original agreement,

and would enhance the objectives of the original energy efficiency contract. *Turner*, March 5, 2007, A.G. Op. #07-00132, 2007 Miss. AG LEXIS 88, modifying *Turner*, Sept. 22, 2006, A.G. Op. 22, 2006, A.G. Op. # 06-0440, 2006 Miss. AG LEXIS 343.

## IMPLEMENTATION OF CENTRAL PURCHASING BY COUNTIES

SEC.

- |           |  |
|-----------|--|
| 31-7-103. | General responsibility of purchase clerk; central purchase system to comply with requirements of State Department of Audit; purchases of \$1,000.00 or less. |
| 31-7-119. | Board of supervisors not to purchase, order or receive products for county; exceptions.  |

## § 31-7-101. Implementation of central purchase system; establishment of department of purchasing; appointment of purchase clerk and receiving clerk.

### ATTORNEY GENERAL OPINIONS

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the

county unit system by issuing certificates of noncompliance. *Brooks*, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

**§ 31-7-103. General responsibility of purchase clerk; central purchase system to comply with requirements of State Department of Audit; purchases of \$1,000.00 or less.**

The purchase clerk shall be responsible as hereinafter provided for the purchase and acquisition of all equipment, heavy equipment, machinery, supplies, commodities, materials and services to be acquired for the county from successful bidders or other vendors, as authorized by law. The central purchase system shall comply with the requirements prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113, and the purchase clerk shall be responsible for the maintenance of such system. No requisition to purchase, purchase order or receiving report shall be required for the purchase of any item or services with an acquisition cost of not more than One Thousand Dollars (\$1,000.00) in the aggregate; however, the invoice for every such purchase shall be signed by the department head or his or her designee, or a receipt signed by the person making the purchase shall be attached to the invoice and forwarded to the purchase clerk. No claim based on any such purchase shall be approved except after compliance with the provisions of this section.

**SOURCES:** Laws, 1974, ch. 513, § 2; Laws, 1975, ch. 359; Laws, 1984, ch. 312; Laws, 1985, ch. 514, § 12; Laws, 1988 Ex Sess, ch. 14, § 22; Laws, 1994, ch. 476, § 1; Laws, 2008, ch. 340, § 1; Laws, 2012, ch. 420, § 1, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment substituted “One Thousand Dollars (\$1,000.00)” for “Five Hundred Dollars (\$500.00)” preceding “in the aggregate; however” near the end of the second sentence.

**§ 31-7-107. Inventory control.**

**ATTORNEY GENERAL OPINIONS**

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. §§ 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the

county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

**§ 31-7-119. Board of supervisors not to purchase, order or receive products for county; exceptions.**

(1) Except as provided in subsection (2) of this section, neither the board of supervisors nor any member thereof shall individually purchase, order or receive any equipment, heavy equipment, machinery, supplies, commodities, materials or services for the use or benefit of the county.

(2) In any county in which the board of supervisors is not required to operate on a countywide system of road administration, the prohibition as provided in subsection (1) of this section shall not apply (a) to purchases of not



more than One Thousand Dollars (\$1,000.00) in the aggregate; or (b) to the purchase of parts or repair services in emergency situations, which purchases are exempt from bid requirements pursuant to Section 31-7-13(m)(ii) and (iii), Mississippi Code of 1972. Any supervisor who purchases any item or services in accordance with this subsection (2) shall sign the invoice or receipt and forward it to the purchase clerk in the manner provided by Section 31-7-103. No claim based on any such purchase shall be approved unless the purchase was made in compliance with the provisions of this subsection.

**SOURCES:** Laws, 1974, ch. 513, § 10; Laws, 1988 Ex Sess, ch. 14, § 28; Laws, 1994, ch. 476, § 2; Laws, 2008, ch. 340, § 2; Laws, 2012, ch. 420, § 2, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment substituted “One Thousand Dollars (\$1,000.00)” for “Five Hundred Dollars (\$500.00)” in the first sentence of (2).

CHAPTER 11

State Construction Projects

In General .....	31-11-1
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IN GENERAL

SEC.	
31-11-3.	Powers and duties [Paragraph (2)(q) repealed effective July 1, 2014].

**§ 31-11-3. Powers and duties [Paragraph (2)(q) repealed effective July 1, 2014].**

(1) The Department of Finance and Administration, for the purposes of carrying out the provisions of this chapter, in addition to all other rights and powers granted by law, shall have full power and authority to employ and compensate architects or other employees necessary for the purpose of making inspections, preparing plans and specifications, supervising the erection of any buildings, and making any repairs or additions as may be determined by the Department of Finance and Administration to be necessary, pursuant to the rules and regulations of the State Personnel Board. The department shall have entire control and supervision of, and determine what, if any, buildings, additions, repairs, demolitions or improvements are to be made under the provisions of this chapter, subject to the regulations adopted by the Public Procurement Review Board.

(2) The department shall have full power to erect buildings, make repairs, additions or improvements, demolitions, to grant or acquire easements or rights-of-way, and to buy materials, supplies and equipment for any of the institutions or departments of the state subject to the regulations adopted by the Public Procurement Review Board. In addition to other powers conferred, the department shall have full power and authority as directed by the



Legislature, or when funds have been appropriated for its use for these purposes, to:

- (a) Build a state office building;
- (b) Build suitable plants or buildings for the use and housing of any state schools or institutions, including the building of plants or buildings for new state schools or institutions, as provided for by the Legislature;
- (c) Provide state aid for the construction of school buildings;
- (d) Promote and develop the training of returned veterans of the United States in all sorts of educational and vocational learning to be supplied by the proper educational institution of the State of Mississippi, and in so doing allocate monies appropriated to it for these purposes to the Governor for use by him in setting up, maintaining and operating an office and employing a state director of on-the-job training for veterans and the personnel necessary in carrying out Public Law No. 346 of the United States;
- (e) Build and equip a hospital and administration building at the Mississippi State Penitentiary;
- (f) Build and equip additional buildings and wards at the Boswell Retardation Center;
- (g) Construct a sewage disposal and treatment plant at the Mississippi State Hospital, and in so doing acquire additional land as may be necessary, and to exercise the right of eminent domain in the acquisition of this land;
- (h) Build and equip the Mississippi central market and purchase or acquire by eminent domain, if necessary, any lands needed for this purpose;
- (i) Build and equip suitable facilities for a training and employing center for the blind;
- (j) Build and equip a gymnasium at Columbia Training School;
- (k) Approve or disapprove the expenditure of any money appropriated by the Legislature when authorized by the bill making the appropriation;
- (l) Expend monies appropriated to it in paying the state's part of the cost of any street paving;
- (m) Sell and convey state lands when authorized by the Legislature, cause said lands to be properly surveyed and platted, execute all deeds or other legal instruments, and do any and all other things required to effectively carry out the purpose and intent of the Legislature. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;
- (n) Collect and receive from educational institutions of the State of Mississippi monies required to be paid by these institutions to the state in carrying out any veterans' educational programs;
- (o) Purchase lands for building sites, or as additions to building sites, for the erection of buildings and other facilities which the department is authorized to erect, and demolish and dispose of old buildings, when necessary for the proper construction of new buildings. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(p) Obtain business property insurance with a deductible of not less than One Hundred Thousand Dollars (\$100,000.00) on state-owned buildings under the management and control of the department; and

(q) **(Repealed effective July 1, 2014).** — In consultation with and approval by the Chairmen of the Public Property Committees of the Senate and the House of Representatives, enter into contracts for the purpose of providing parking spaces for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building. The provisions of this paragraph (q) shall stand repealed on July 1, 2014.

(3) The department shall survey state-owned and state-utilized buildings to establish an estimate of the costs of architectural alterations, pursuant to the Americans With Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The department shall establish priorities for making the identified architectural alterations and shall make known to the Legislative Budget Office and to the Legislature the required cost to effectuate such alterations. To meet the requirements of this section, the department shall use standards of accessibility that are at least as stringent as any applicable federal requirements and may consider:

(a) Federal minimum guidelines and requirements issued by the United States Architectural and Transportation Barriers Compliance Board and standards issued by other federal agencies;

(b) The criteria contained in the American Standard Specifications for Making Buildings Accessible and Usable by the Physically Handicapped and any amendments thereto as approved by the American Standards Association, Incorporated (ANSI Standards);

(c) Design manuals;

(d) Applicable federal guidelines;

(e) Current literature in the field;

(f) Applicable safety standards; and

(g) Any applicable environmental impact statements.

(4) The department shall observe the provisions of Section 31-5-23, in letting contracts and shall use Mississippi products, including paint, varnish and lacquer which contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as a solvent or thinner, where these products are available at a cost not to exceed the cost of products grown, produced, prepared, made or manufactured outside of the State of Mississippi.

(5) The department shall have authority to accept grants, loans or donations from the United States government or from any other sources for the purpose of matching funds in carrying out the provisions of this chapter.

(6) The department shall build a wheelchair ramp at the War Memorial Building which complies with all applicable federal laws, regulations and specifications regarding wheelchair ramps.

(7) The department shall review and preapprove all architectural or engineering service contracts entered into by any state agency, institution,

commission, board or authority regardless of the source of funding used to defray the costs of the construction or renovation project for which services are to be obtained. The provisions of this subsection (7) shall not apply to any architectural or engineering contract paid for by self-generated funds of any of the state institutions of higher learning, nor shall they apply to community college projects that are funded from local funds or other nonstate sources which are outside the Department of Finance and Administration's appropriations or as directed by the Legislature. The provisions of this subsection (7) shall not apply to any construction or design projects of the State Military Department that are funded from federal funds or other nonstate sources.

(8) The department shall have the authority to obtain annually from the state institutions of higher learning information on all building, construction and renovation projects including duties, responsibilities and costs of any architect or engineer hired by any such institutions.

(9) As an alternative to other methods of awarding contracts as prescribed by law, the department may elect to use the method of contracting for construction projects set out in Sections 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build method of construction contracting authorized under Section 31-7-13.1 may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project.

(10) The department shall have the authority, for the purposes of carrying out the provisions of this chapter, and in addition to all other rights and powers granted by law, to create and maintain a list of suspended and debarred contractors and subcontractors. Consistent with this authority, the department may adopt regulations governing the suspension or debarment of contractors and subcontractors, which regulations shall be subject to the approval of the Public Procurement Review Board. A suspended or debarred contractor or subcontractor shall be disqualified from consideration for contracts with the department during the suspension or debarment period in accordance with the department's regulations.

(11) This section shall not apply to the Mississippi State Port Authority.

**SOURCES:** Codes, 1942, § 9023-02; Laws, 1944, ch. 328, §§ 2-4; Laws, 1946, ch. 386, §§ 1, 2; Laws, 1950, ch. 392, § 2; Laws, 1981, ch. 323, § 1; Laws, 1984, ch. 488, § 30; Laws, 1991, ch. 411, § 1; Laws, 1993, ch. 615, § 2; Laws, 1994, ch. 448, § 1; Laws, 1994 Ex Sess, ch. 26, § 24; Laws, 2004, 3rd Ex Sess, ch. 1, § 189; Laws, 2005, ch. 504, § 1; Laws, 2006, ch. 457, § 3; Laws, 2006, ch. 579, § 2; Laws, 2007, ch. 494, § 8; Laws, 2008, ch. 488, § 1; Laws, 2010, ch. 314, § 3; Laws, 2011, ch. 485, § 1; Laws, 2012, ch. 485, § 3, eff from and after passage (approved Apr. 26, 2012.)

**Amendment Notes** — The 2011 amendment added (10).

The 2012 amendment substituted "Mississippi State Hospital" for "state insane hospital" in (2)(g); and added (11).



## ATTORNEY GENERAL OPINIONS

Each county is required under Miss. Code Ann. § 19-7-1 to build a jail within the corporate limits of the municipality where the courts are required to sit. A municipality is obligated to grant a special exception to its zoning ordinances unless it is determined, consistent with

the facts, that construction of a county jail would create a public nuisance or a clear and present danger to the public health and welfare. Yancey, Mitchell, March 23, 2007, A.G. Op. #07-00120, 2007 Miss. AG LEXIS 75.

## CHAPTER 18

### Variable Rate Debt Instruments

#### § 31-18-1. Definitions.

**SOURCES:** Laws, 2003, ch. 522, § 52 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

#### § 31-18-3. Purpose.

**SOURCES:** Laws, 2003, ch. 522, § 53 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

#### § 31-18-5. State supported debt issued as variable rate bond.

**SOURCES:** Laws, 2003, ch. 522, § 54 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

#### § 31-18-7. Issuance of variable rate refunding bonds by the state.

**SOURCES:** Laws, 2003, ch. 522, § 55 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

#### § 31-18-9. Commission's power of state-supported debt.

**SOURCES:** Laws, 2003, ch. 522, § 56 effective upon its passage, and approved by the Governor on April 19, 2003



**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

### **§ 31-18-11. Interest rate exchange or similar agreements; limitations.**

**SOURCES:** Laws, 2003, ch. 522, § 57 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

### **§ 31-18-13. Initial date variable rate debt instruments.**

**SOURCES:** Laws, 2003, ch. 522, § 58 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

### **§ 31-18-15. Debt obligation or related instrument.**

**SOURCES:** Laws, 2003, ch. 522, § 59 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

### **§ 31-18-17. Exercise of power.**

**SOURCES:** Laws, 2003, ch. 522, § 60 effective upon its passage, and it was approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

### **§ 31-18-19. Issuance of variable rate bonds.**

**SOURCES:** Laws, 2003, ch. 522, § 61 effective upon its passage, and approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

### **§ 31-18-21. Provisions of issuance; variable rate bonds.**

**SOURCES:** Laws, 2003, ch. 522, § 62 effective upon its passage, and it was approved by the Governor on April 19, 2003

**Editor's Note** — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

SOURCES: Laws, 2003, ch. 522, § 63 effective upon its passage, and approved by the Governor on April 19, 2003

Editor’s Note — The section Sources information is set out above to correct an error in the effective date of ch 522, Laws of 2003.

CHAPTER 25

Mississippi Development Bank Act

Article 1.	General Provisions .....	31-25-1
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ARTICLE 1.

GENERAL PROVISIONS.

SEC.	
31-25-28.	Purpose for which loan may be made [Subsections (7) and (9) repealed effective July 1, 2014].

§ 31-25-28. Purpose for which loan may be made [Subsections (7) and (9) repealed effective July 1, 2014].

(1) Local governmental units may borrow money or receive grants from the bank for any of the purposes set forth in this section or Section 31-25-20(g) and pay to the bank such fees and charges for services as the bank may prescribe. Whenever any such loan is made to a local governmental unit, such local governmental unit may use available revenues for the repayment of the principal of, premium, if any, and interest on such loan, and pledge such available revenues or monies for the repayment of the principal of, premium, if any, and interest on such loan. It is the intention of the Legislature that any such pledge of revenues or other monies shall be valid and binding from the date the pledge is made; that such revenues or other monies so pledged and thereafter received by the local governmental unit shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the local governmental unit irrespective of whether such parties have notice thereof; and neither the resolutions, contracts or any other instrument by which a pledge is created need be recorded.

(2) Local governmental units may contract with the bank with respect to any such loan and such contract shall contain such terms and conditions as may be prescribed by the bank.

(3) Local governmental units may in connection with any such loan enter into any covenants and agreements with respect to such local governmental

unit's operations, revenues, assets, monies, funds or property, or such loan, as may be prescribed by the bank.

(4) Upon the making of any such loan by the bank to any local governmental unit, such local governmental unit shall be held and be deemed to have agreed that if such governmental unit fails to pay the principal of, premium, if any, and interest on any such loan as when due and payable, such governmental unit shall have waived any and all defenses to such nonpayment, and the bank, upon such nonpayment, shall thereupon avail itself of all remedies, rights and provisions of law applicable in such circumstance, including, without limitation, any remedies or rights theretofore agreed to by the local governmental unit, and that such loan shall for all of the purposes of this section, be held and be deemed to have become due and payable and to be unpaid. The bank may carry out the provisions of this section and exercise all of the rights and remedies and provisions of law provided or referred to in this section and of all other applicable laws of the state.

(5) Any local governmental unit that borrows from the bank under this section may agree in writing with the bank that, as provided in this subsection, the Department of Revenue or any state agency, department or commission created pursuant to state law shall (a) withhold all or any part (as agreed by the local governmental unit) of any monies that such local governmental unit is entitled to receive from time to time pursuant to any law and that is in the possession of the Department of Revenue or any state agency, department or commission created pursuant to state law and (b) pay the same over to the bank to satisfy any delinquent payments on any such loan made to such local governmental unit under the provisions of this section and any other delinquent payments due and owing the bank by such local governmental unit, all as the same shall occur. If the bank files a copy of such written agreement, together with a statement of delinquency, with the Department of Revenue or any state agency, department or commission created pursuant to state law, then the Department of Revenue or any state agency, department or commission created pursuant to state law shall immediately make the withholdings provided in such agreement from the amounts due the local governmental unit and shall continue to pay the same over to the bank until all such delinquencies are satisfied.

(6) Before authorizing any loan for any of the purposes enumerated in Section 31-25-20(e), the governing authority of the local governmental unit shall adopt a resolution declaring its intention so to do, stating the amount of the loan proposed to be authorized and the purpose for which the loan is to be authorized, and the date upon which the loan will be authorized. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such local governmental unit. The first publication of such resolution shall be made not less than twenty-one (21) days before the date fixed in such resolution for the authorization of the loan and the last publication shall be made not more than seven (7) days before such date. If no newspaper is published in such local governmental unit, then such notice shall be given by publishing the resolution for the required time in



some newspaper having a general circulation in such local governmental unit and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed therein at three (3) public places in such local governmental unit. If fifteen percent (15%) of the qualified electors of the local governmental unit or fifteen hundred (1500), whichever is the lesser, file a written protest against the authorization of such loan on or before the date specified in such resolution, then an election on the question of the authorization of such loan shall be called and held as otherwise provided for in connection with the issuance of general obligation indebtedness of such local governmental unit. Notice of such election shall be given as otherwise required in connection with the issuance of general obligation indebtedness of such local governmental unit. If three-fifths ( $\frac{3}{5}$ ) of the qualified electors voting in the election vote in favor of authorizing the loan, then the governing authority of the local governmental unit shall proceed with the loan; however, if less than three-fifths ( $\frac{3}{5}$ ) of the qualified electors voting in the election vote in favor of authorizing the loan, then the loan shall not be incurred. If no protest be filed, then such loan may be entered into by the local governmental unit without an election on the question of the authorization of such loan, at any time within a period of two (2) years after the date specified in the resolution. However, the governing authority of any local governmental unit in its discretion may nevertheless call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to authorize such loan as provided in this subsection.

(7)(a) The Department of Environmental Quality may borrow money from the bank for any purpose as otherwise authorized by this act or for the purpose of funding loan programs (including revolving loan programs) for the Department of Environmental Quality, or both. The Department of Environmental Quality may contract with the bank with respect to any loan from the bank to fund such loan programs and the loan from the bank may include any terms and conditions as provided for in this section. If the Department of Environmental Quality borrows funds pursuant to this subsection (7), then the Department of Environmental Quality shall certify the following to the bank prior to making the loan from the bank:

(i) The revolving loan program or other program to be funded through the issuance of the bonds;

(ii) Available revenues which the Department of Environmental Quality intends to use to repay the loan; and

(iii) That the Department of Environmental Quality does not intend to request an additional appropriation from the Legislature to pay debt service on the loan from the bank or for such security.

(b) If the Department of Environmental Quality meets the requirements of paragraph (a) of this subsection (7), then the Department of Environmental Quality shall not be required to meet the requirements of Section 31-25-27(14). Notwithstanding any other provision of law, including any limitations or restrictions under Section 49-17-81 et seq., the Department of Environmental Quality may designate or pledge any funds, rev-

enues or any other amounts received under its loan programs designated under paragraph (a)(i) of this subsection (7) to repay a loan from the bank under this subsection (7). Funds, revenues or any other amounts received under a loan program as provided under this subsection (7) specifically include, but are not limited to, any principal and/or interest loan repayments from any participant under the program, any investment earnings, or other amounts held by the Department of Environmental Quality in connection with the applicable loan program. Any loan program of the Department of Environmental Quality otherwise authorized by law shall be deemed to be a public purpose for purposes of this act which the bank may loan funds under the provisions of this act.

(c) In connection with a loan under this subsection (7), the bank may administer and manage loan programs as provided in the contracts with the bank to loan funds thereunder.

(d) The maximum amount that the Department of Environmental Quality may borrow under this subsection (7) shall not exceed Eighty Million Dollars (\$80,000,000.00) in the aggregate.

(e) This subsection (7) shall stand repealed on July 1, 2014.

(8)(a) In connection with any refunding of the Ten Million Five Hundred Seventy Thousand Dollars (\$10,570,000.00), State of Mississippi, Department of Rehabilitation Services, Certificates of Participation (State of Mississippi, Department of Rehabilitation Services Project) dated August 1, 1993, the bank may issue its bonds to provide for such refunding and the Department of Rehabilitation Services may borrow money from the bank for the purpose of providing for the refunding of such Certificates of Participation. The Department of Rehabilitation Services may contract with the bank with respect to any loan from the bank under this paragraph (a), to provide for the refunding of such Certificates of Participation and such loan from the bank may include any terms and conditions as provided for in this section. In connection with the refunding of the Certificates of Participation pursuant to this paragraph (a), such refunding shall result in an overall net present value savings to maturity of not less than two percent (2%) of the Certificates of Participation being refunded.

(b) The Department of Rehabilitation Services may borrow money from the bank in an amount not to exceed Seven Million Dollars (\$7,000,000.00) for the purpose of construction at, and repair and renovation, furnishing and equipping of, the department's office building located in Madison, Mississippi.

(c) In connection with any loan under this subsection (8), the Department of Rehabilitation Services shall not be required to meet the requirements of Section 31-25-27(14).

(9)(a) The State Department of Health may borrow money from the bank for any purpose as otherwise authorized by this act or for the purpose of funding loan programs (including revolving loan programs) for the State Department of Health, or both. The State Department of Health may contract with the bank with respect to any loan from the bank to fund loan

programs and the loan from the bank may include any terms and conditions as provided for in this section. If the State Department of Health borrows funds pursuant to this subsection (9), then the State Department of Health shall certify the following to the bank prior to making the loan from the bank:

(i) The revolving loan program or other program to be funded through the issuance of the bonds;

(ii) Available revenues which the State Department of Health intends to use to repay the loan; and

(iii) That the State Department of Health does not intend to request an additional appropriation from the Legislature to pay debt service on the loan from the bank or for such security.

(b) If the State Department of Health meets the requirements of paragraph (a) of this subsection (9), then the State Department of Health shall not be required to meet the requirements of Section 31-25-27(14). Notwithstanding any other provision of law, including any limitations or restrictions under Section 41-3-16 et seq., the State Department of Health may designate or pledge any funds, revenues or any other amounts received under its loan programs designated under paragraph (a)(i) of this subsection (9) to repay a loan from the bank under this subsection (9). Funds, revenues or any other amounts received under a loan program as provided under this subsection (9) specifically include, but are not limited to, any principal and/or interest loan repayments from any participant under the program, any investment earnings, or other amounts held by the State Department of Health in connection with the applicable loan program. Any loan program of the State Department of Health otherwise authorized by law shall be deemed to be a public purpose for purposes of this act which the bank may loan funds under the provisions of this act.

(c) In connection with a loan under this subsection (9), the bank may administer and manage loan programs as provided in the contracts with the bank to loan funds thereunder.

(d) The maximum amount that the State Department of Health may borrow under this subsection (9) shall not exceed Eighty Million Dollars (\$80,000,000.00) in the aggregate.

(e) This subsection (9) shall stand repealed on July 1, 2014.

(10) This section shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized by this section and shall be deemed and construed to be supplemental to any power conferred by other laws on local governmental units and not in derogation of any such powers. Any loan made pursuant to the provisions of this section shall not constitute an indebtedness of the local governmental unit within the meaning of any constitutional or statutory limitation or restriction. In connection with a loan under this chapter, a local governmental unit shall not be required to comply with the provisions of any other law except as provided in this section.



**SOURCES:** Laws, 1996, ch. 470, § 2; Laws, 1997, ch. 302, § 6; Laws, 2004, ch. 570, § 1; Laws, 2006, ch. 411, § 1; Laws, 2010, ch. 494, § 1; Laws, 2011, ch. 308, § 2, eff from and after July 1, 2011.

**Amendment Notes** — The 2011 amendment substituted “Department of Revenue” with “State Tax Commission” throughout (5); in (8), inserted paragraph designations, substituted “paragraph (a)” for “subsection (8)” in (a) and added (8)(b); and made minor stylistic changes.

## CHAPTER 29

### Institute for Technology Development

SEC.  
31-29-23. Representation by Attorney General in issuing, selling and validating bonds; costs and expenses of issuance of bonds.

#### **§ 31-29-23. Representation by Attorney General in issuing, selling and validating bonds; costs and expenses of issuance of bonds.**

Except as otherwise authorized in Section 7-5-39, the Attorney General of the State of Mississippi shall represent the State Bond Commission in issuing, selling and validating bonds herein provided for, and the bond commission is hereby authorized and empowered to expend from the proceeds derived from the sale of the bonds authorized hereunder all necessary administrative, legal and other expenses incidental and related to the issuance of bonds authorized under this chapter.

**SOURCES:** Laws, 1987, ch. 437, § 12; Laws, 2012, ch. 546, § 14, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment added the exception at the beginning.



# TITLE 33

## MILITARY AFFAIRS

Chapter 4.	Mississippi Military Family Relief Fund .....	33-4-1
Chapter 13.	Mississippi Code of Military Justice .....	33-13-1
Chapter 15.	Emergency Management and Civil Defense .....	33-15-1

### CHAPTER 4

#### Mississippi Military Family Relief Fund

SEC.	
33-4-1.	Mississippi Military Family Relief Fund created; money in fund under direction of Military Department; use of funds; eligibility requirements.

#### **§ 33-4-1. Mississippi Military Family Relief Fund created; money in fund under direction of Military Department; use of funds; eligibility requirements.**

A special fund to be designated the “Mississippi Military Family Relief Fund” is created in the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. The fund shall consist of any money designated for deposit therein from any source, including, but not limited to, money designated for deposit therein by Section 27-7-94, and private contributions. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund. Money in the fund shall be under the direction of the Military Department. Such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, based upon recommendations made by the Adjutant General. Money in the fund shall be utilized to make grants to families that experience a financial hardship as a result of a family member who is a Mississippi resident and a member of the Mississippi National Guard or the Reserves of the Armed Forces of the United States being mobilized and deployed under Title 10 USC active duty service or being a resident in a Presidential Declared Disaster area. The Adjutant General shall establish eligibility requirements for receipt of the grants and the amount of the grants by rule no later than December 31, 2005.

**SOURCES:** Laws, 2005, 2nd Ex Sess, ch. 6, § 1 effective from and after passage June 14, 2005; Laws, 2007, ch. 447, § 1; Laws, 2012, ch. 436, § 1, eff from and after passage (approved Apr. 19, 2012.)

**Amendment Notes** — The 2012 amendment substituted “mobilized and deployed under Title 10 USC active duty service or being a resident in a Presidential Declared Disaster area” for “called to active duty as a result of the September 11, 2001, terrorist attacks” at the end of the next-to-last sentence.



CHAPTER 9

Property and Finances

§ 33-9-23. Disposition of state property.

**Editor’s Note** — Laws of 2012, ch. 497, §§ 1, provides:

“SECTION 1. (1) The Adjutant General of the State of Mississippi is hereby authorized, under the authority of Section 33-9-23, to transfer and convey to the Town of Prentiss, Mississippi, located in Jefferson Davis County, for the use and occupancy of the Prentiss Police and Fire Departments the following property and improvements constructed thereon owned and formerly used by the United States of America for a National Guard Armory located at 1340 Highway 84 West, Prentiss, Mississippi, which is currently under a short-term lease with the Town of Prentiss, being more particularly described as follows:

“4.36 acres, more or less, in the NW ¼ of the SE ¼ Section 11, T-7-N, R-19-W.

“All bearing shown are referenced to found monuments shown on the West line of the East ½ of Section 11, T-7-N,

“R-19-W, Jefferson Davis County, Mississippi. They are based on the NAD 83 West Zone State Plane Coordinate System and are derived from a global positioning system observation.

“The north and south property lines are subject to road right-of-way.

“(2) Such land and improvements may be transferred or conveyed to the Town of Prentiss, Mississippi, for the use and occupancy of the Prentiss Police and Fire Departments for any consideration and upon such other terms and conditions as the Adjutant General may deem advisable.

“(3) The Adjutant General is authorized to convey and transfer title to said land and improvements only. Any such conveyance shall provide that title to said land and improvements shall revert to the State of Mississippi in the event the Town of Prentiss ceases to use the real property for the purposes intended in this legislation for which it was transferred or conveyed.

CHAPTER 13

Mississippi Code of Military Justice

Article 5.	Nonjudicial Punishment .....	33-13-31
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ARTICLE 5.

NONJUDICIAL PUNISHMENT.

SEC.	
33-13-31.	Commanding officer’s nonjudicial punishment.

§ 33-13-31. Commanding officer’s nonjudicial punishment.

(1) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, and the categories of commanding officers and warrant officers exercising command authorized to exercise those powers. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations

of the Governor, the Governor or an officer of general rank in command may delegate his powers under this section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to consult with counsel having the qualifications prescribed under Section 33-13-15(2), Mississippi Code of 1972, if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed forty-eight (48) hours, or longer on written justification, to reply to the notification of intent to impose punishment under this section.

(2) Subject to subsection (1) of this section, any commanding officer or the Commandant of the Mississippi Military Academy may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses:

(a) Upon officers of his command:

(i) Restriction to certain specified limits with or without suspension from duty, for not more than thirty (30) days;

(ii) If imposed by the Governor, or an officer of general rank in command;

(A) Arrest in quarters for not more than thirty (30) days;

(B) A fine of not more than Seventy-five Dollars (\$75.00), subject to such limitations as may be imposed by federal law;

(C) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days;

(D) Detention of not more than one-half ( $\frac{1}{2}$ ) of one (1) month's pay per month for three (3) months.

(b) Upon other personnel of his command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three (3) days;

(ii) Correctional custody for not more than seven (7) days;

(iii) A fine of not more than Ten Dollars (\$10.00), subject to such limitations as may be imposed by federal law;

(iv) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(v) Extra duties including fatigue or other duties, for not more than thirty (30) days, which need not be consecutive, and for not more than two (2) hours per day, holidays included;

(vi) Restriction to certain specified limits, with or without suspension from duty for not more than thirty (30) days;

(vii) Detention of not more than fourteen (14) days' pay;

(viii) If imposed by an officer of the grade of major or above;

(A) The punishment authorized under subsection (2)(b)(i) of this section;

(B) Correctional custody for not more than thirty (30) days;

(C) A fine of not more than Seventy-five Dollars (\$75.00), subject to such limitations as may be imposed by federal law;

(D) Reduction to the lowest or any intermediate pay grade if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

(E) Extra duties including fatigue or other duties, for not more than forty-five (45) days which need not be consecutive and for not more than two (2) hours per day, holidays included;

(F) Restriction to certain specified limits with or without suspension from duty, for not more than sixty (60) days;

(G) Detention of not more than one-half ( $\frac{1}{2}$ ) of one (1) month's pay per month for three (3) months. Detention of pay shall be for a stated period of not more than one (1) year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two (2) or more of the punishments of arrest in quarters, correctional custody, extra duties and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. For the purpose of this subsection, "correctional custody" is the physical restraint of a person during nonduty hours and may include extra duties, fatigue duties or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(3)(a) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (2)(b)(i)-(vii) of this section as the Governor may specifically prescribe by regulation.

(b) The Commandant of the Mississippi Military Academy may impose upon officers of which he is in charge such of the punishments authorized under subsection (2)(a)(i) of this section.

(4) The officer who imposes the punishment authorized in subsection (2) or his successor in command may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine imposed under subsection (2), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges and property affected. He may also mitigate reduction in grade to a fine and/or detention of pay.

When mitigating (a) arrest in quarters or restriction, or (b) extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated.

When mitigating reduction in grade to a fine and/or detention of pay, the amount of the fine and/or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.



(5) A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may, in the meantime, be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (a) Arrest in quarters for more than seven (7) days;
- (b) Correctional custody for more than seven (7) days;
- (c) A fine of Seventy-five Dollars (\$75.00);
- (d) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (e) Extra duties for more than fourteen (14) days' pay;
- (f) Restriction of more than fourteen (14) days' pay;
- (g) Detention of more than fourteen (14) days' pay; the authority who is to act on the appeal shall refer the case to a judge advocate of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2).

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section, but the fact that disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

**SOURCES:** Former § 33-13-101 [Codes, 1942, § 8529-15; Laws, 1966, ch. 538, § 15] repealed by Laws, 1981, ch. 362, § 102; Laws, 2011, ch. 352, § 1, eff from and after July 1, 2011.

**Amendment Notes** — The 2011 amendment deleted “the applicability of this section to an accused who demands trial by court-martial and the kinds of court-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the state military forces under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment” at the end of the first sentence in (1); and in (2), deleted “without the intervention of a court-martial” at the end of the introductory paragraph.

## CHAPTER 15

### Emergency Management and Civil Defense

Article 1.	Emergency Management Law .....	33-15-1
Article 5.	Disaster Assistance Act of 1993 .....	33-15-301

ARTICLE 1.

EMERGENCY MANAGEMENT LAW.

SEC.

33-15-17. Local organization of emergency management.

33-15-19. Mutual aid arrangements.

**§ 33-15-17. Local organization of emergency management.**

(a) Each county and municipality, or counties and the municipalities therein acting jointly, or two (2) or more counties acting jointly, of this state are hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program, if required and authorized so to do by such state emergency management plan. Each local organization for emergency management shall have a director who shall be appointed by the governing body of the political subdivision, or political subdivisions acting jointly, and who shall have direct responsibility for the organization, administration and operation of such local organization for emergency management, subject to the direction and control of such governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of the state emergency management plan. Each county shall develop an emergency management plan and program that is coordinated and consistent with the State Comprehensive Emergency Management Plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to this section shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state emergency management plan and program.

(b) In carrying out the provisions of this article each county and municipality, or the two (2) acting jointly, or two (2) or more counties acting jointly, where there is joint organization, in which any disaster as described in Section 33-15-5 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each county and municipality is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds.

(c) Each county and each municipality, or two (2) or more counties acting jointly, shall have the power and authority:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any enemy attack or man-made, technological or natural disasters; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers;

(3) To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government, and direction and control of emergency operation during an emergency;

(4) To donate public funds, supplies, labor and equipment to assist any governmental entity in a county or municipality in which a disaster as described in Section 33-15-5 occurs;

(5) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty, the employees, property or equipment of the subdivision relating to fire fighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency management purposes either within or outside of the limits of the subdivision;

(6) Subject to the order of the chief executive of the county or municipality or the Governor to order the evacuation of any area subject to an impending or existing enemy attack or man-made, technological or natural disaster;

(7) Subject to the order of the chief executive of the county or municipality or the Governor, to control or restrict egress, ingress and movement within the disaster area to the degree necessary to facilitate the protection of life and property;

(8) To enter into mutual aid agreements in the manner authorized by Section 33-15-19.

(d) A local emergency as defined in Section 33-15-5 may be proclaimed by the mayor or governing body of a municipality or the governing body of a county. In the event a local emergency is proclaimed by the mayor of a municipality, the governing body of such municipality shall review and approve or disapprove the need for continuing the local emergency at its first regular meeting following such proclamation or at a special meeting legally called for such review. Thereafter, the governing body shall review the need for continuing the local emergency at least every thirty (30) days until such local emergency is terminated, and shall proclaim the termination of such local emergency at the earliest possible date that conditions warrant. During a local emergency, the governing body of a political subdivision may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated



boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread notice and publicity. The authorization granted by this section to impose a curfew shall not be construed as restricting in any manner the existing authority to impose a curfew pursuant to police power for any other lawful purpose.

**SOURCES:** Codes, 1942, § 8610-09; Laws, 1942, ch. 206; Laws, 1952, ch. 312, § 9; Laws, 1980, ch. 491, § 9; Laws, 1983, ch. 420, § 4; Laws, 1995, ch. 333, § 9; Laws, 2005, 5th Ex Sess, ch. 20, § 1; Laws, 2010, ch. 347, § 1; Laws, 2012, ch. 359, § 2, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment added (c)(8).

### ATTORNEY GENERAL OPINIONS

Installation of GPS or other electronic tracking devices on county vehicles for emergency management purposes does not violate privacy rights under state law. Disclosure of the presence of such devices

to the drivers and occupants of county vehicles is a matter of county policy. Drane, March 16, 2007, A.G. Op. #07-00105, 2007 Miss. AG LEXIS 74.

### § 33-15-19. Mutual aid arrangements.

(a) The governing body of a municipality or county of the state is authorized to participate in the Statewide Mutual Aid Compact (SMAC) established by the agency as a mechanism to standardize mutual aid arrangements between jurisdictions within the state. SMAC provides guidelines for requesting and receiving mutual aid, liability protection and reimbursement procedures for providing such aid. The governing body of each political subdivision of the state is strongly encouraged to sign and ratify the SMAC for mutual aid between their jurisdiction and other cities or counties within the state. A copy of this agreement must be signed by the senior elected official of the jurisdiction and the director and will be maintained on file by the agency.

(b) Political subdivisions of the state, including their fire service agencies, are also authorized to develop and enter into mutual aid agreements with other jurisdictions outside the state for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted. This shall also include emergencies outside the state in which it is geographically reasonable for a political subdivision of this state, or its fire service, to respond. Copies of the agreements shall be sent to the agency and shall be consistent with the state comprehensive emergency management plan and program, and in time of emergency it shall be the duty of each local emergency management organization to render assistance in accordance with the provisions of such mutual aid agreements.

(c) The Governor may enter into compacts with any state or group of states if he finds that joint action with that state or group of states is desirable in meeting common intergovernmental problems of emergency management planning or emergency prevention, mitigation, response and recovery.

(1) Political subdivisions of the state, including their fire service agencies, shall not be liable for the death of or any injury to persons, or damage to property and all other protections provided in Section 33-15-21(a), as a result of mutual aid agreements entered into pursuant to this section.

(2) Employees of a political subdivision of this state shall have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment and all other benefits provided by Section 33-15-15.

**SOURCES:** Codes, 1942, § 8610-10; Laws, 1952, ch. 312, § 10; Laws, 1980, ch. 491, § 10; Laws, 1995, ch. 333, § 10; Laws, 2006, ch. 374, § 2; Laws, 2012, ch. 359, § 1, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment, in (b), inserted “including their fire service agencies” following “Political subdivisions of the state” in the first sentence, and added the next-to-last sentence; and added (c)(1) and (2).

## ARTICLE 5.

### DISASTER ASSISTANCE ACT OF 1993.

SEC.

33-15-308. Requisition of additional funds for Disaster Assistance Trust Fund to provide for disaster assistance.

### **§ 33-15-308. Requisition of additional funds for Disaster Assistance Trust Fund to provide for disaster assistance.**

It is the intention of the Legislature that whenever the Director of the Mississippi Emergency Management Agency determines that funds are immediately needed in the Disaster Assistance Trust Fund to provide for disaster assistance under this section, he shall notify the Executive Director of the Department of Finance and Administration of his determination and shall requisition the amount of funds from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) that are needed in the trust fund, which shall be subject to the limitations set forth below in this section. At the same time he makes the requisition, the director shall notify the Lieutenant Governor, the Speaker of the House of Representatives and the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee and the House Ways and Means Committee of his determination of the need for the funds and the amount that he has requisitioned. Upon receipt of such a requisition from the director, the Executive Director of the Department of Finance and Administration shall ascertain if the amount requisitioned is available in the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) and is within the limitations set forth below in this section and, if it is, he shall transfer that amount from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the trust fund. If the

amount requisitioned is more than the amount available in the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) or above the limitations set forth below in this section, the executive director shall transfer the amount that is available within the limitations. The maximum amount that may be transferred from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the trust fund for any one (1) disaster occurrence shall be Five Hundred Thousand Dollars (\$500,000.00) and the maximum amount that may be transferred during any fiscal year shall be One Million Dollars (\$1,000,000.00).

It is the intention of the Legislature, that during the subsequent legislative session, consideration shall be given to provide an appropriation equal to the amount transferred from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the Disaster Assistance Trust Fund under the provisions of this section as repayment to the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund.

**SOURCES:** Laws, 2012, ch. 547, § 6, eff from and after July 1, 2012.

**Cross References** — Working Cash-Stabilization Reserve Fund, see § 27-103-203. Budget Contingency Fund, see § 27-103-301.



# Index

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## C

### **CONTRACTORS.**

#### **Public works contracts.**

Department of finance and administration.

List of debarred and suspended contractors and subcontractors, §31-11-3.

## D

### **DISASTER ASSISTANCE TRUST FUND.**

**Requisition of additional funds,** §33-15-308.

## I

### **IMMUNITY.**

#### **Emergency management.**

Mutual aid agreements, §33-15-19.

## L

### **LANDMARKS.**

#### **Public purchasing.**

Advertising for competitive bids.

Procedure for Mississippi landmarks, §31-7-13.

## P

### **PUBLIC BUILDINGS.**

#### **Emergency management agency building.**

Designation as Haley R. Barbour Building, §29-5-109.

### **PUBLIC BUILDINGS —Cont'd**

#### **Transportation department building.**

William J. "Billy" McCoy building, designation as, §29-5-107.

### **PUBLIC PURCHASING AND CONTRACTING.**

#### **School districts.**

Procurement cards for teachers and personnel, §31-7-9.

### **PUBLIC WORKS CONTRACTS.**

#### **Department of finance and administration.**

List of debarred and suspended contractors and subcontractors, §31-11-3.

**Employment plan to be submitted by contractors,** §31-5-37.

## S

### **SIXTEENTH SECTION SCHOOL LANDS.**

#### **Easements.**

Acquisition of easements by purchase and not eminent domain, §29-3-92.

## U

### **UNEMPLOYMENT**

#### **COMPENSATION.**

#### **Public works contracts.**

Employment plan to be submitted by contractors, §31-5-37.





















